

AMENDED IN SENATE APRIL 22, 2010

AMENDED IN SENATE APRIL 12, 2010

**SENATE BILL**

**No. 884**

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**Introduced by Senator Ashburn**  
**(Coauthor: Senator Runner)**

January 19, 2010

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~~An act to amend Sections 6225, 6451, and 6459 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 6225, 6459, and 6592 of, and to add Sections 6225.1 and 6225.2 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 884, as amended, Ashburn. Sales and use taxes: use tax: administration.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. In order to facilitate the collection of the use tax, a qualified purchaser, as defined, is required to register with the State Board of Equalization and to report and pay by April 15 the use tax owed for the previous calendar year, as provided.

~~This bill would, instead, for tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the 2009 calendar year, require a qualified purchaser to report and pay the use tax by October 15, 2010.~~

~~The bill would declare that its provisions and retroactive application serve a public purpose, as specified.~~

*This bill would instead require a qualified purchaser that is subject to the tax imposed by the Personal Income Tax Law to file a return for use tax by April 15, following the close of the calendar year, and to file a return made on the basis of a fiscal year by the 15th day of the 4th month following the close of the fiscal year. The bill would require a qualified purchaser that is subject to the tax imposed by the Corporation Tax Law to file a return for use tax by March 15, following the close of the calendar year, and to file a return filed on the basis of the fiscal year by the 15th day of the 3rd month following the close of the fiscal year. The bill would authorize the board to grant a reasonable extension of time for filing a return, as specified, and to grant a reasonable extension of time for the payment of tax when it determines that good cause exists, would authorize a refund of penalties paid with respect to reporting periods in 2007, 2008, and 2009, and would delay the imposition of any authorized penalties for qualified purchasers until on or after March 16, 2011. The bill would declare that its provisions and retroactive application serve a public purpose, as specified.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6225 of the Revenue and Taxation Code  
 2     is amended to read:  
 3     6225. (a) In order to facilitate the collection of use tax imposed  
 4     by this part, a qualified purchaser shall register with the board on  
 5     a form prescribed by the board and shall set forth the name under  
 6     which the qualified purchaser transacts or intends to transact  
 7     business, the location of the qualified purchaser's place or places  
 8     of business, and other information ~~as~~ *that* the board may require.  
 9     (b) Article 1 (commencing with Section 6451) of Chapter 5 of  
 10    this part shall apply to a qualified purchaser, except that a return  
 11    showing the total sales price of the tangible personal property  
 12    purchased by the qualified purchaser, the storage, use, or other  
 13    consumption of which became subject to the use tax during the  
 14    preceding calendar year, and which was not paid to a retailer  
 15    required to collect the tax or which was not paid to a retailer the  
 16    qualified purchaser reasonably believed was required to collect

the tax, shall be filed, together with a remittance of the amount of the tax due, with the board ~~on or before April 15~~ in accordance with paragraphs (1) and (2).

(1) For a qualified purchaser subject to the tax imposed by Part 10 (commencing with Section 17001), a return filed pursuant to this section on the basis of the calendar year shall be filed on or before April 15, following the close of the calendar year. A return made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year.

(2) For a qualified purchaser subject to the tax imposed by Part 11 (commencing with Section 23001), a return filed pursuant to this section on the basis of the calendar year shall be filed on or before March 15, following the close of the calendar year. A return made on the basis of the fiscal year shall be filed on or before the 15th day of the third month following the close of the fiscal year.

(c) A “qualified purchaser” means a person that meets all of the following conditions:

(1) The person is not required to hold a seller’s permit pursuant to this part.

(2) The person is not required to be registered pursuant to Section 6226.

(3) The person is not a holder of a use tax direct payment permit as described in Section 7051.3.

(4) The person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.

(5) The person is not otherwise registered with the board to report use tax.

(d) “Fiscal year” means an accounting period of 12 months ending on the last day of any month other than December.

~~(e)~~

(e) This section shall not apply to the purchase of a vehicle, vessel, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

SEC. 2. Section 6225.1 is added to the Revenue and Taxation Code, to read:

6225.1. (a) For purposes of administering Section 6225, the board may grant a reasonable extension of time for filing a return in the manner and form it determines.

1     (1) For a qualified purchaser subject to the tax imposed by Part  
2     10 (commencing with Section 17001), except for a qualified  
3     purchaser residing or traveling abroad, an extension of time shall  
4     not be granted for more than six months. For a qualified purchaser  
5     residing or traveling abroad, a return shall be filed no later than  
6     the 15th day of the sixth month following the close of the taxable  
7     year, unless the requirements for an extension have been fulfilled  
8     on or before that date.

9     (2) For a qualified purchaser subject to the tax imposed by Part  
10    11 (commencing with Section 23001) no extension or extensions  
11    shall aggregate more than seven months from the due date for  
12    filing the return.

13    (b) An extension of time granted pursuant to this section is not  
14    an extension of time for payment of the tax required to be paid on  
15    or before the due date of the return without regard to extension.  
16    Penalties and interest shall be imposed, as provided by law, without  
17    regard to any extension granted under this section.

18    (c) A reasonable extension for payment of tax required by  
19    Section 6225 may be granted by the board whenever in its judgment  
20    good cause exists.

21    SEC. 3. Section 6225.2 is added to the Revenue and Taxation  
22    Code, to read:

23    6225.2. A penalty shall not be imposed on a qualified  
24    purchaser's failure to timely remit use tax for reporting periods  
25    in 2007, 2008, and 2009 unless the qualified purchaser fails to  
26    remit payment of the use tax attributable to those periods on or  
27    before March 15, 2011. Notwithstanding Section 6902, any penalty  
28    paid to the board with respect to use tax due for reporting periods  
29    in 2007, 2008, and 2009 shall be refunded to the qualified  
30    purchaser, as promptly as feasible, provided the qualified  
31    purchaser has paid all use tax liability for those reporting periods  
32    on or before March 15, 2011. This section shall not preclude the  
33    board from making any determinations for understatements of use  
34    tax against the qualified purchaser in accordance with Chapter 5  
35    (commencing with Section 6451).

36    SEC. 4. Section 6459 of the Revenue and Taxation Code is  
37    amended to read:

38    6459. (a) ~~The~~ Except as provided in Section 6225.1, the board  
39    for good cause may extend for not to exceed one month the time  
40    for making any return or paying any amount required to be paid

1 under this part. The extension may be granted at any time provided  
2 a request therefor is filed with the board within or prior to the  
3 period for which the extension may be granted.

4 Any person to whom an extension is granted shall pay, in  
5 addition to the tax, interest at the modified adjusted rate per month,  
6 or fraction thereof, established pursuant to Section 6591.5, from  
7 the date on which the tax would have been due without the  
8 extension until the date of payment.

9 (b) The board may grant an extension for more than one month  
10 if both of the following conditions occur:

11 (1) A budget for the state has not been adopted by July 1.

12 (2) The person requesting the extension is a creditor of the state  
13 who has not been paid because of the state's failure to timely adopt  
14 a budget.

15 Any extension granted under this subdivision shall expire no  
16 later than the last day of the month following the month in which  
17 the budget is adopted or one month from the due date of the return  
18 or payment, whichever comes later.

19 Any person to whom an extension has been granted under this  
20 subdivision shall pay, in addition to the tax, interest at the modified  
21 adjusted rate per month, or fraction thereof, established pursuant  
22 to Section 6591.5, from the date on which the tax would have been  
23 due without the extension until the date of payment. However, no  
24 interest shall be due on that portion of the payment equivalent to  
25 the amount due to the person from the state on the due date of the  
26 payment.

27 *SEC. 5. Section 6592 of the Revenue and Taxation Code is*  
28 *amended to read:*

29 6592. (a) ~~If~~ Except as provided in Section 6225.2, if the board  
30 finds that a person's failure to make a timely return or payment is  
31 due to reasonable cause and circumstances beyond the person's  
32 control, and occurred notwithstanding the exercise of ordinary  
33 care and the absence of willful neglect, the person shall be relieved  
34 of the penalties provided by Sections 6476, 6477, 6479.3, 6480.4,  
35 6480.8, 6511, 6565, 6591, 7051.2, 7073, and 7074.

36 (b) Except as provided in subdivision (c) any person seeking to  
37 be relieved of the penalty shall file with the board a statement  
38 under penalty of perjury setting forth the facts upon which he or  
39 she bases his or her claim for relief.

(c) The board shall establish criteria that provides for efficient resolution of requests for relief pursuant to this section.

*SEC. 6. The Legislature finds and declares that this act and its retroactive application are necessary to serve a public purpose by ensuring the fair and equitable treatment of taxpayers.*

*SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:*

*In order to address problems relating to administration and collection of the use tax and to prevent undue hardship to taxpayers, it is necessary that this act take effect immediately.*

~~SECTION 1. Section 6225 of the Revenue and Taxation Code is amended to read:~~

~~6225. (a) (1) In order to facilitate the collection of use tax imposed by this part, a qualified purchaser shall register with the board on a form prescribed by the board and shall set forth the name under which the qualified purchaser transacts or intends to transact business, the location of the qualified purchaser's place or places of business, and other information that the board may require.~~

~~(b) (1) Article 1 (commencing with Section 6451) of Chapter 5 of this part shall apply to a qualified purchaser, except that a return showing the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, and which was not paid to a retailer required to collect the tax or which was not paid to a retailer the qualified purchaser reasonably believed was required to collect the tax, shall be filed, together with a remittance of the amount of the tax due, with the board on or before April 15.~~

~~(2) Notwithstanding paragraph (1), with respect to calendar year 2009, the return described in paragraph (1), together with a remittance of the amount of tax due, shall be filed on or before October 15, 2010.~~

~~(c) A "qualified purchaser" means a person that meets all of the following conditions:~~

~~(1) The person is not required to hold a seller's permit pursuant to this part.~~

1     ~~(2) The person is not required to be registered pursuant to~~  
2     ~~Section 6226.~~

3     ~~(3) The person is not a holder of a use tax direct payment permit~~  
4     ~~as described in Section 7051.3.~~

5     ~~(4) The person receives at least one hundred thousand dollars~~  
6     ~~(\$100,000) in gross receipts from business operations per calendar~~  
7     ~~year.~~

8     ~~(5) The person is not otherwise registered with the board to~~  
9     ~~report use tax.~~

10    ~~(d) This section shall not apply to the purchase of a vehicle,~~  
11    ~~vessel, or aircraft as defined in Article 1 (commencing with Section~~  
12    ~~6271) of Chapter 3.5 of this part.~~

13    ~~SEC. 2. Section 6451 of the Revenue and Taxation Code is~~  
14    ~~amended to read:~~

15    ~~6451. Except as provided in Section 6225, the taxes imposed~~  
16    ~~by this part are due and payable to the board quarterly on or before~~  
17    ~~the last day of the month next succeeding each quarterly period.~~

18    ~~SEC. 3. Section 6459 of the Revenue and Taxation Code is~~  
19    ~~amended to read:~~

20    ~~6459. (a) Except as provided in Section 6225, the board for~~  
21    ~~good cause may extend for not to exceed one month the time for~~  
22    ~~making any return or paying any amount required to be paid under~~  
23    ~~this part. The extension may be granted at any time provided a~~  
24    ~~request therefor is filed with the board within or prior to the period~~  
25    ~~for which the extension may be granted.~~

26    ~~Any person to whom an extension is granted shall pay, in~~  
27    ~~addition to the tax, interest at the modified adjusted rate per month,~~  
28    ~~or fraction thereof, established pursuant to Section 6591.5, from~~  
29    ~~the date on which the tax would have been due without the~~  
30    ~~extension until the date of payment.~~

31    ~~(b) The board may grant an extension for more than one month~~  
32    ~~if both of the following conditions occur:~~

33    ~~(1) A budget for the state has not been adopted by July 1.~~

34    ~~(2) The person requesting the extension is a creditor of the state~~  
35    ~~who has not been paid because of the state's failure to timely adopt~~  
36    ~~a budget.~~

37    ~~Any extension granted under this subdivision shall expire no~~  
38    ~~later than the last day of the month following the month in which~~  
39    ~~the budget is adopted or one month from the due date of the return~~  
40    ~~or payment, whichever comes later.~~

1     ~~Any person to whom an extension has been granted under this~~  
2     ~~subdivision shall pay, in addition to the tax, interest at the modified~~  
3     ~~adjusted rate per month, or fraction thereof, established pursuant~~  
4     ~~to Section 6591.5, from the date on which the tax would have been~~  
5     ~~due without the extension until the date of payment. However, no~~  
6     ~~interest shall be due on that portion of the payment equivalent to~~  
7     ~~the amount due to the person from the state on the due date of the~~  
8     ~~payment.~~

9     ~~SEC. 4. The Legislature finds and declares that this act and its~~  
10    ~~retroactive application are necessary to serve a public purpose by~~  
11    ~~ensuring the fair and equitable treatment of taxpayers.~~

12    ~~SEC. 5. This act is an urgency statute necessary for the~~  
13    ~~immediate preservation of the public peace, health, or safety within~~  
14    ~~the meaning of Article IV of the Constitution and shall go into~~  
15    ~~immediate effect. The facts constituting the necessity are:~~

16    ~~In order to address problems relating to administration and~~  
17    ~~collection of the use tax and to prevent undue hardship to taxpayers,~~  
18    ~~it is necessary that this act take effect immediately.~~